

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ANDRE DOW,

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 3:24-cv-00102-MMD-CSD

ORDER

I. SUMMARY

Plaintiff Andre Dow brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Lovelock Correctional Center. (ECF No. 1-1.) On May 31, 2024, this Court ordered Dow to either pay the full \$405 filing fee for a civil action or file a fully complete application to proceed *in forma pauperis* by July 1, 2024. (ECF No. 4.) The Court warned Dow that the action could be dismissed if he failed to timely comply. (*Id.* at 2.) That deadline expired and Dow did not pay the full \$405 filing fee, file a complete application to proceed *in forma pauperis*, move for an extension, or otherwise respond.

II. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to

1 dismiss an action on one of these grounds, the Court must consider: (1) the public's
2 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
3 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
4 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
5 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
6 *Malone*, 833 F.2d at 130).


7 The first two factors, the public's interest in expeditiously resolving this litigation
8 and the Court's interest in managing its docket, weigh in favor of dismissal of Dow's
9 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
10 because a presumption of injury arises from the occurrence of unreasonable delay in filing
11 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542
12 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
13 cases on their merits—is greatly outweighed by the factors favoring dismissal.

14 The fifth factor requires the Court to consider whether less drastic alternatives can
15 be used to correct the party's failure that brought about the Court's need to consider
16 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
17 that considering less drastic alternatives *before* the party has disobeyed a court order
18 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
19 Cir. 2002). Courts "need not exhaust every sanction short of dismissal before finally
20 dismissing a case, but must explore possible and meaningful alternatives." *Henderson v.*
21 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). The Court must collect filing fees from
22 parties initiating civil actions, and litigation cannot realistically proceed without a party's
23 compliance with the Court's orders. The only alternative to dismissal is to enter a second
24 order setting another deadline. But the reality of repeating an ignored order is that it often
25 only delays the inevitable and squanders the Court's finite resources. The circumstances
26 here do not indicate that this case will be an exception. Setting another deadline is not a
27 meaningful alternative given these circumstances. So the fifth factor favors dismissal.

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Having thoroughly considered these dismissal factors, the Court finds that they weigh in favor of dismissal. It is therefore ordered that this action is dismissed without prejudice based on Andre Dow's failure to either pay the full \$405 filing fee or file a complete application to proceed *in forma pauperis* in compliance with the Court's May 31, 2024, order.

It is further ordered that Dow's motion for the appointment of counsel (ECF No. 3-1) is denied as moot.


MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE